# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 124.

HOTEL & RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE, LOCAL NO. 122, et al.,
Petitioners and Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD et al.,
Respondents and Appellees.

## APPENDIX TO REPLY BRIEF

In Support of Petition for Writ of Certiorari, Setting Forth

1. Findings of Fact and Conclusions of Law in the Contempt Proceedings.
2. Decision of the Wisconsin Supreme Court, Filed on June 25, 1941, in Wisconsin Employment Relations Board vs. Milk & Ice Cream Drivers and Dairy Employees' Union, Local No. 225.
3. Decision of the Wisconsin Supreme Court, Filed on June 25, 1941, in Carpenter Baking Co. vs. Bakery Sales Drivers Local Union No. 344 (A. F. of L.) et al.

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STATE OF WISCONSIN

CIRCUIT COURT MILWAUKEE COUNTY

Case No. 170-382.

Hotel & Restaurant Employees' International Alliance, Local No. 122; Phil L. Valley, John Alexander, and Jack Heisdorf, each individually, as business agent, organizer, and vice president, respectively, for, and as representatives of, all the members of Hotel & Restaurant Employees' International Alliance, Local No. 122;

International Laundry Workers, Local No. 174;

Bartenders International League of America, Local No. 64, sometimes known as International Bartenders & Beverage Dispensers, Local No. 64;

International Union Operating Engineers, Local No. 311;

Milwaukee Building Trades Council;

All affiliated with the American Federation of Labor,

Petitioners,

vs.

Wisconsin Employment Relations Board; Henry C. Fuldner, individually and as chairman of, L. E. Gooding, individually and as a member of, R. Floyd Green, individually and as a member of, the Wisconsin Employment Relations Board; the Independent Organization of Plankinton House Employees; and Plankinton House Company, a corporation,

Respondents.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW PREPARED BY THE COURT.

This matter came on to be heard before the court upon the petition of the Wisconsin Employment Relations Board, the exhibits and affidavits thereto annexed, and an

order to show cause based thereon, wherein it was ordered that the Hotel & Restaurant Employees' International Alliance, Local No. 122, its president, Al Gamby, its business agent, Phil L. Valley, its organizer, John Alexander, and its vice president, Jack Heisdorf; International Laundry Workers, Local No. 174, its president, Vernon Byerly, its vice president, Arno Schulz, and its secretary-treasurer, Mary Barczynski; Bartenders International League of America, Local No. 64; its president, Edward Neumann, its vice president, Gus Johnson, its business agent, Jack Ward, and its secretary, James M. Manley; International Union of Operating Engineers, Local No. 311, its president, Fran J. Wild, its vice president, John Morrison, its financial secretary, Joseph Gellott, and its treasurer, Albert Kunz; Milwaukee Building & Construction Trades Council, its president, Peter T. Schoemann, its vice president, John Zancanaro, and its secretary and treasurer, Jacob J. Schaefer; Wisconsin State Federation of Labor, its president, Herman Seide, and its secretary and treasurer, John J. Handley; The Federated Trades Council, its secretary, Frank Ranney, and its organizer, Jac Friedrich, show cause before the above named court, Honorable Gustave G. Gehrz, Circuit Judge presiding, at the court room of said court, being Branch No. 5 of the Circuit Court for Milwaukee County, Wisconsin, in the Courthouse at Milwaukee, in the County of Milwaukee, State of Wisconsin, on the 21st day of March, 1941, at the hour of nine o'clock in the forenoon of said day or as soon thereafter as counsel could be heard, why they, the said unions and the officers above named should not be punished as and for a civil contempt for misconduct in failing to obey and in disobeying the judgment of this court, dated May 14, 1940, as set forth in said petition, and the exhibits and affidavits thereto annexed in accordance with the prayer of said petition, and why this

court should not grant the orders and relief prayed for in said petition.

The matter came on for hearing pursuant to the said order to show cause on the 21st day of March, 1941, before the circuit court for Milwaukee County, Honorable Gustave G. Gehrz, Circuit Judge, presiding.

The petitioner, Wisconsin Employment Relations Board, appeared by John E. Martin, Attorney General, and James Ward Rector, Deputy Attorney General, by N. S. Boardman, Assistant Attorney General. The Plankinton House Company, a corporation, appeared by Herman M. Knoeller, and the unions and their officers above named, appeared by Padway, Goldberg and Tarrell.

A preliminary motion to quash was argued and said motion denied. The case was adjourned for the mutual convenience of the court and the parties, all parties consenting thereto, until the 1st day of May, 1941. The case was heard on May 1 and May 2, 1941. The case was comprehensively argued for three full days, May 5, 6 and 7, after which briefs were later submitted, whereupon the court took the matter under advisement and the court on the 8th day of July, 1941, having rendered its decision, does hereby make and file the following findings of fact and conclusions of law:

## FINDINGS OF FACT.

### I.

That the Wisconsin Employment Relations Board is and was at all times referred to in these proceedings an administrative body created by Ch. 57, Laws of 1939, and that Henry C. Fuldner is the chairman and L. E. Gooding and R. Floyd Green are commissioners or members of said board.

II.

That the Hotel and Restaurant Employees' International Alliance Local No. 122 is a voluntary, unincorporated association (labor union) affiliated with the American Federation of Labor and with the Wisconsin State Federation of Labor. That said local is chartered by and affiliated with the Hotel & Restaurant Employees International Alliance and Bartenders League of America, A. F. of L., which is in turn chartered by the American Federation of Labor. That during all periods material to this case Al Gamby was president of said local until on or about the 1st day of January, 1941; Jack Heisdorf was vice president of said local; Phil L. Valley was and is business agent of said local, and that John Alexander was and is chairman of the strike committee of said local; that on the 1st day of January, 1941, Al Gamby resigned to accept employment without the state of Wisconsin, and since said date has not been affiliated with Local 122; that on said date (January 1, 1941) the above named Jack Heisdorf succeeded Al Gamby as president of said local and that Andrew Perenchio succeeded Jack Heisdorf on said date as vice president of said local. That said local has an approximate membership of 3,000.

III.

That the Bartenders International League of America Local No. 64 is a voluntary, unincorporated association (labor union) affiliated with the American Federation of Labor and with the Wisconsin State Federation of Labor; that Edward Neumann is the president of said local; that Gus Johnson is vice president of said local; that Jack Ward is business agent for said local, and that James M. Manley is secretary of said local, and were such at all times material to this case. That said local is chartered by and affiliated with the same international as the said Local 122.

which in turn is chartered by the American Federation of Labor. That said local has an approximate membership of 1000.

IV.

That the International Laundry Workers, Local No. 74 is a voluntary, unincorporated association (labor union) affiliated with the American Federation of Labor and with the Wisconsin State Federation of Labor; that Vernon Byerly is president of said local; that Arno Schulz is vice president of said local; and that Mary Barczynski is secretary-treasurer of said local, and were such at all times material to this case. That said local is chartered by and affiliated with the International Laundry Workers Union, which in turn is chartered by the American Federation of Labor. That said local has an approximate membership of 700.

V.

That International Union Operating Engineers, Local No. 311, is a voluntary, unincorporated association (labor union) affiliated with the American Federation of Labor and with the Wisconsin State Federation of Labor; that Frank J. Wild is the president of said local; that John Morrison is the vice president of said local, that Joseph Gellott is financial secretary of said local, and that Albert Kunz is treasurer of said local. That said local is chartered by and affiliated with the Operating Engineers International Union, which in turn is chartered by the American Federation of Labor. That said local has an approximate membership of 750.

VI.

That the Milwaukee Building and Construction Trades Council is a central labor organization composed of delegates of the various A. F. of L. locals in the city of Mil-

waukee, whose members are employed in the building trades crafts, all of which labor unions are affiliated with the American Federation of Labor and with the Wisconsin State Federation of Labor. That the officers are Peter T. Schoemann, president, John Zancanaro, vice president, and Jacob J. Schaefer, secretary and treasurer, and that said persons were such officers at all times material to this case. That all A. F. of L. building trades crafts locals in the county of Milwaukee are affiliated with this central body; that there are 32 such affiliated locals comprising a membership of approximately 20,000; that the Milwaukee Building and Construction Trades Council is chartered by Building Trades and Construction Trades Department of A. F. of L. and affiliated with the Wisconsin State Federation of Labor and with the Federated Trades Council, and that all of its affiliates are in turn affiliated with the Federated Trades Council and the Wisconsin State Federation of Labor.

VII.

That the Wisconsin State Federation of Labor is a voluntary association, statewide in scope; that Local A. F. of L. unions and central labor bodies are affiliated therewith for their mutual advancement. That some of the purposes of said Wisconsin State Federation of Labor are to devise means for the complete organization of labor in the State of Wisconsin, to coordinate the activities of all locals throughout the state, to cooperate with such locals in the attainment of their objectives; to establish better communication between the labor unions of said State of Wisconsin; to secure united and harmonious action in all matters affecting the welfare of organized workers, to circulate labor literature, to make known the enemies of organized labor; to endorse or protect whenever the labor interests of the people in Wisconsin may be involved; to promote the closest possible unity among laboring people in matters of

general concern; through combination and organization and affiliation and inter-affiliation, to secure and obtain the support of all affiliated unions and their members, the co-operation and united action of all affiliated unions and their members, prompt and concerted action of all affiliated unions and their members, and the entire numerical strength of all A. F. of L. affiliated unions in support of and in the attainment of the approved demands and objectives of a contending union or unions.

That since October 26, 1940, Herman Seide has been and is now president of the Wisconsin State Federation of Labor and that at all times material to this case John J. Handley has been and now is secretary and treasurer thereof. That prior to October 16, 1940, Henry Ohl, at all times material to this case, was president of said organization. That Henry Ohl died on or about October 16, 1940, and was succeeded by Herman Seide as president of said organization.

That there are approximately 1600 A. F. of L. unions in the State of Wisconsin, comprising a membership of approximately 200,000, of which approximately 225 locals are located in Milwaukee County, comprising an approximate membership of 80,000.

That the Wisconsin State Federation of Labor is composed of delegates elected by affiliated locals, each union of 100 members or less being entitled to one delegate and for each additional 100 members, or major fraction thereof, one additional delegate or vote. That the Wisconsin State Federation of Labor between conventions is governed by a general executive board consisting of the president, secretary, treasurer and eleven executive board members, four of whom reside in the city of Milwaukee, and seven of whom are from the various other parts of the State of Wisconsin.

That the executive board and officers are elected at the annual convention by the delegates of the organizations affiliated with the Wisconsin State Federation of Labor. That central labor organizations likewise are represented by delegates at the annual convention but voting by such delegates is limited as set forth in the constitution.

That local A. F. of L. unions are not obliged to affiliate with the Wisconsin State Federation of Labor. If local A. F. of L. unions wish to obtain the services and benefits that can be obtained from such organization they must affiliate. Practically all local unions are affiliated with the State Federation of Labor. The same is true of the central bodies or organizations.

Local unions affiliated with the Wisconsin State Federation of Labor must pay a monthly fee to said state organization based upon the membership or working membership of the local. Such affiliation and the payment for services rendered entitle the affiliated local to the benefits to be derived from organization, as hereinbefore set forth, and to the communications, pamphlets, letters, etc., sent out by the state organization to these locals which choose to avail themselves of the services and benefits that the state organization may render to its affiliates.

Federal labor union locals are chartered by the American Federation of Labor. They are organized upon an industrial basis rather than upon a craft basis. They may affiliate themselves with central bodies and the Wisconsin State Federation of Labor the same as any other local and are entitled to be represented at the annual convention of the Wisconsin State Federation of Labor the same as any other local.

VIII.

That the Federated Trades Council of Milwaukee is a voluntary association, affiliated with the American Federa-

tion of Labor and the Wisconsin State Federation of Labor. That it is a central labor body with which local labor unions in the Milwaukee County area may become affiliated; that it functions as a coordinating agency for A. F. of L. affiliates in Milwaukee County area in the same manner and for the same purpose as the Wisconsin State Federation of Labor for all affiliated unions in Milwaukee County except as noted in this finding. The aims, policies, purposes, functions and mode of operation of the Federated Trades Council of Milwaukee are the same as those of the Wisconsin State Federation of Labor set forth in the preceding finding hereof except as otherwise set forth in this finding.

The officers of said council are Frank Ranney, secretary, and Jac Friedrich, organizer, and they were such officers of said council at all times material to this case.

Local unions in the Milwaukee County area may, but are not obliged to, belong or affiliate with said council. That affiliation with said council requires the payment of dues by affiliated unions upon a basis similar to that of affiliation with the State Federation. The Federated Trades Council of Milwaukee is composed of delegates elected by affiliated unions. The council consists of three delegates from each local union having 100 members or less, and one delegate for every additional fifty or major fraction thereof. Central trade bodies are entitled to affiliate and to representation upon the council and to take part in discussions but are not entitled to vote.

All of the unions named in findings 2 to 6, inclusive, are affiliated with the Federated Trades Council. The officers of said unions, named in said findings 2 to 6, inclusive, are delegates to the council from their respective unions and have been such at all times material to this case. The Hotel and Restaurant Employees' International Alliance Local No. 122 has 53 delegates in the council; that the

Bartenders International League of America Local No. 64 has 16 delegates in the council; that the International Laundry Workers Local No. 174 has 8 delegates in the council; that International Union Operating Engineers Local No. 311 has 14 delegates in the council; and that the Milwaukee Building and Construction Trades Council has 220 delegates in the council.

That the council functions by holding meetings of the delegates biweekly. That the delegates of any affiliated local are free to and do present the problems of said local, the demands which it is making upon a particular employer, the progress made, the status of any controversy and in general any matter of importance to the said local, and to request and demand the support of all affiliated unions in the council in the attainment of its approved demands and requests. That said affiliated unions comprise an approximate membership of 80,000. That the Federated Trades Council, through its biweekly convention system of operation, is in constant touch with and in constant familiarity with the status of any controversy in which an affiliated local is engaged.

That following each biweekly meeting of the council a report of the proceedings of the council is printed and forwarded to each affiliated union. That each issue of said bulletin contains a "we do not patronize" list. That the council functions as a body whereby affiliated locals through combination and organization and affiliation and inter-affiliation, secure and obtain the support of all affiliated unions and their members, the cooperation and united action of all affiliated unions and their members, prompt and concerted action of all affiliated unions and their members, and the entire numerical strength of all A. F. of L. affiliated unions in support of and in the attainment of the approved demands and objectives of a contending union or unions.

IX.

All of said labor organizations described in findings 2 to 8, inclusive, hereof are located in the city of Milwaukee, Milwaukee County, Wisconsin.

X.

There were duly and personally served upon Padway, Goldberg & Tarrell, attorneys for the unions referred to in findings 2 to 6, inclusive, true and correct copies of the judgments, together with copies of notice of entry thereof in each of the three cases referred to in paragraphs 10 to 13, inclusive, of the petition in the instant proceeding, to-wit: Case No. 170-382 (unfair labor practice) on the 16th day of May, 1940, Case No. 170-381 (representation case) on the 20th day of May, 1940, and Case No. 170-880 (representation case) on the 20th day of May, 1940. Said representation cases above referred to arose out of the same labor dispute as is involved in this unfair labor practice case, No. 170-382. All of the unions and officers cited in this contempt proceeding had notice and knowledge of the judgments in said cases. All of the unions described in findings 2-6, inclusive, hereof, and the officers, agents and members thereof, and the officers and agents of the organizations described in findings 7 and 8 hereof, had knowledge of the appeal to the supreme court from the judgment of this court, dated May 14, 1940, the issues involved in said appeal and the decision of the supreme court on said appeal, rendered on November 8, 1940, and its decision on motion for rehearing, rendered on January 7, 1941, and the officers of said unions had themselves read, or had read to them, and had discussed said opinions and were thoroughly familiar with the contents thereof, as well as with the order of the board, this court's judgment of enforcement, dated May 14, 1940, and said decisions of the supreme court

affirming said judgment of enforcement. Petition for writ of certiorari is now pending in the Supreme Court of the United States.

XI.

A. From May 17, 1940, until January 13, 1941, the unions named in findings 2, 3, 4, and 6 daily conducted picketing and so-called advertising and by and large during the hours and at the places and in the numbers permitted by the qualified stay of this court dated May 17, 1940; that such picketing was ostensibly carried on as a method of advertising, whereas in truth and in fact, it substantially exceeded the bounds of actual, bona fide **advertising** as more fully set forth in finding 18. At all times during the period above mentioned, and when the so-called advertising was conducted, the pickets (alleged advertisers) wore aprons or "sandwich signs" which bore the following legend: "Plankinton and Kilbourn Hotels do not have a contract with A. F. of L. Hotel Unions. Please do not patronize."

B. Automobiles carrying signs on the tops thereof with the inscription above set forth, were employed by the unions named in findings 2, 3, 4, and 6 hereof, for the period commencing about May 20, 1940, and ending February 25, 1941. Said automobiles daily and for eighteen hours each day carried the inscription above mentioned and were driven throughout the city of Milwaukee and particularly through the downtown area bearing such inscription. That the number of automobiles displaying such signs were five in number. Said automobiles were driven particularly in the vicinity of boat docks, railroad depots, at boat and train times, and parked at said terminals where they would attract the attention of passengers arriving at said boat docks and railroad depots, and were driven through the downtown area where large numbers of people would see and read such inscription.

XII.

Commencing January 13, 1941, the unions named in findings 2, 3, 4, and 6 and the officers, agents and members thereof, knowingly and intentionally, prior to return of the remittitur by the Supreme Court and without previous leave or order of any court or the making of any application therefor, and upon deliberation and after giving consideration to the matters referred to in finding 10, and in concert with (except the picketing described on January 13, 1941) and acting under the advice of and with the encouragement, support and approval of the Wisconsin State Federation of Labor and the Federated Trades Council and the officers thereof, and of their counsel, Joseph A. Padway and I. E. Goldberg, commenced picketing the entrances to said hotels upon a 24 hour basis, day in and day out, including Sundays. Said counsel advised that to engage in said conduct was not a violation of the court's judgment. Such picketing upon such 24 hour basis is conducted in the following manner:

There were one to two pickets (most of the time two pickets) at the guest entrances to the hotels continuously day in and day out, including Sundays, upon a 24 hour basis. Pickets varying from one to two in number are stationed at the alley and delivery entrances to said hotels, used for the purpose of procuring essential goods, wares, merchandise and services in the conduct of the hotels. Picketing at the alley and delivery entrances is seldom upon a 24 hour basis, but commences between five and six o'clock in the morning and continues anywhere to from 9:30 P. M. to midnight.

At noon on January 13, 1941, there were eight pickets in number at the Plankinton Street entrance to the Plankinton Hotel. Said pickets paraded or marched in an elliptical formation designed to block ingress and egress via such

entranceway. This is the only occasion when the pickets partially interfered physically with egress and ingress of patrons and guests or other persons wishing to use said entrances. That John Alexander, captain of the pickets, shortly after this occurrence and on the same day, instructed the picket captains and the pickets not to march in such manner or in such numbers. Such instructions have been observed and followed.

That the pickets at all entrances and at all times wore aprons or "sandwich signs" from January 13, 1941, to February 25, 1941, bearing the legend "Plankinton and Kilbourn Hotels do not have a contract with A. F. of L. Hotel Unions. Please do not patronize." That on February 25, 1941, this legend was changed to read "Employees of the Plankinton and Kilbourn Hotels are not members of A. F. of L. Hotel Unions." This sign was in use at the time of hearing, and picketing was then being conducted, as set forth in this finding, but with the further objective and results set forth in findings 17 and 18.

XIII.

A. The change in wording on the sandwich signs worn by the pickets since February 25, 1941, resulted in neither a substantial increase or decrease in the business transacted by the hotels. The economic effect upon the hotels was as theretofore, and the use of the new signs in the same degree effectivly produced the result desired by the unions.

B. That this change in wording of the sandwich signs worn by the pickets was a sham and subterfuge designed to cloak the real purpose, intent and object of the picketing and other activities.

XIV.

That the unions named in paragraphs 2, 3, 4, and 6 of these findings, and the responsible officers and agents

thereof, have, since the inception of the strike on November 2, 1939, and at all times subsequent thereto, requested and procured the support and backing of the Wisconsin State Federation of Labor and the Federated Trades Council of Milwaukee. Since the inception of the strike, and at all times subsequent thereto, and at the request of said unions and the responsible officers and agents thereof, said unions have solicited and substantially procured the coordinated, continuous, united concert of action of all the affiliated organizations and the members thereof afforded by the Wisconsin State Federation of Labor and the Federated Trades Council.

XV.

That ever since May 17, 1940, the named labor organizations, set forth in paragraphs 2 to 8 inclusive (except Local 311, International Union Operating Engineers) and the responsible officers and agents thereof and other unions asked the general public not to patronize the Plankinton and Kilbourn Hotels, and have disseminated by word of mouth and in writing, whenever opportunity presented itself, that the Plankinton and Kilbourn Hotels are on the "we do not patronize" or "unfair" list; have written and contacted by telephone persons and organizations that had contracted with said hotels for the holding of banquets or conventions and have urged said parties and said organizations to hold the banquet or convention elsewhere.

XVI.

That in many instances where persons, firms and organizations had arranged for banquets, conventions or other functions to be held at the Plankinton Hotel the labor organizations named in paragraphs 2 to 8 inclusive (except Local 311 and the responsible officers and agents thereof) and other unions affiliated with the central bodies requested

such persons, firms or organizations to hold the banquets, conventions or other functions elsewhere than at the Plankinton or Kilbourn Hotels. That in a large number of instances the Plankinton and Kilbourn Hotels lost business, suffered cancellation of contracts and damages as a result thereof and lost business about to be scheduled because of said activities.

That said activities have been continuous throughout the period of the qualified stay granted by this court on May 17, 1940, and thereafter to the date hereof whenever cases arose when such activities might be engaged in.

XVII.

That the picketing engaged in commencing January 13, 1941, and which continued thereafter, created an arbitrary dead line or barrier along the pickets' path which had all of the force and significance of a "picket line" as set forth in the next succeeding paragraph.

XVIII.

A. That a fundamental tenet of A. F. of L. unionism and one of the cornerstones upon which such unionism is based is that of honoring an A. F. of L. picket or pickets. This fundamental concept and rule is usually expressed in terms of "not going through a picket line." One A. F. of L. picket in front of a place of business or establishment is a picket line within the rule and recognized as such by all A. F. of L. union members.

B. That the above mentioned rule creates an arbitrary dead line along the pickets' path beyond which no A. F. of L. member dare pass, regardless of whatever craft, trade, industry or profession the member may be in, and regardless of whether said member or the A. F. of L. union of which he is a member has any dispute with the picketed

place of business or employment, and regardless of whether said member's employer has any dispute with the picketed place of business or employment. That the result of the picketing which commenced January 13, 1941, and continued thereafter was to create such dead line along the pickets' path as above set forth and within public streets and alleys.

C. That any A. F. of L. member, regardless of whether said member or the A. F. of L. union of which he is a member has any dispute with the picketed place of business or employment, and regardless of whether said member's employer has any dispute with the picketed place of business, who disregards this rule of trade unionism and enters the place of business by "crossing the picket line" to himself perform any service for the picketed place of business or to patronize said place of business or to have any contacts therewith, or to perform any service for his employer by way of delivery of goods, wares, merchandise, material, equipment, supplies or the rendition of services, knows that he violates said rule and commits an act of disloyalty to his union and that he subjects himself or runs the risk of subjecting himself to fine, suspension or other diciplinary action by the union of which he is a member. Such disciplinary action may be and in this case was severe.

D. That the "not going through a picket line" rule is not a voluntary or optional matter with A. F. of L. members.

E. That the enforcement of the rule by way of disciplinary action of offenders is not entirely optional with the various locals affiliated with the Wisconsin State Federation of Labor and the Federated Trades Council of Milwaukee. There is at least a tacit understanding among all locals affiliated with the Federated Trades Council that the rule will be enforced as to all approved strikes. The strike involved in this case was approved.

F. That the arbitrary dead line along the pickets' path impeded and interfered with the free use of streets and alleys, entrances and exits and the making of needed deliveries and with any voluntary patronizing of the hotels by any A. F. of L. members.

G. That employers of A. F. of L. labor not involved in a particular controversy, as well as those who are involved, are informed and know all of the facts set forth in A, B and C of this finding.

H. That the effect of the arbitrary dead line along the pickets' path is to coerce and intimidate all A. F. of L. members not involved in the particular controversy who themselves or whose employers customarily have business relations with the picketed place of business, or who desire to establish business contacts with the picketed place of business. That the foregoing was the effect in this case.

I. That the effect of the arbitrary dead line along the pickets' path is that of coercing and intimidating all employers of A. F. of L. labor not involved in the controversy who have previously and customarily enjoyed business contacts and relations with the picketed place of business or who desire to establish such business relations with the picketed place of business or establishment. Such employers fear and have reason to fear labor troubles of their own with repercussions against or injury to their own business should they insist upon their A. F. of L. labor "crossing the picket line" to deliver goods, wares, merchandise, material, equipment or supplies or to render services to the picketed place of business or employment. That the result in this case was as above set forth.

J. That a large percentage (approximately 90 per cent) of the suppliers of goods, wares, merchandise and services essential and necessary for the conduct of the hotels have stopped making delivery at the hotels.

That said suppliers of goods, wares, merchandise and services have no dispute with the hotels and their A. F. of L. employees have no dispute with the hotels.

K. That the effect of the arbitrary dead line along the pickets path is that of intimidating and coercing the employer, the Plankinton House Company.

L. It also serves the purpose, and has the effect, in many instances, of intimidating and coercing those of the public who have contracted for banquets or conventions to be held at the picketed hotels or who are about to contract for same, to cancel such contracts or refrain from entering into same.

M. Such picket line, given the status, force and use above described, has the effect, and is an instrumentality to coerce and intimidate the employees of the Plankinton House Company with respect to their right to work and to freely select their bargaining agency without interference.

## XIX.

That the picketing commencing January 13, 1941, and which continued thereafter was engaged in with full knowledge upon the part of the unions named in paragraphs 2 to 8 inclusive of these findings and the responsible officers and agents thereof, that A. F. of L. members would not cross the picket line and would not be permitted to cross. Such result was anticipated and expected and known to said unions and the responsible officers and agents thereof.

Such result is the natural and probable consequence of the rule of "not going through a picket line" when tested in the light of the facts established and the purpose and object of affiliation and inter-affiliation of "locals" with central bodies designed to produce such results.

XX.

That during the period May 13, 1940 to January 13, 1941 the unions designated in findings 2, 3, 4, and 6, and through the functioning of the central bodies named in findings 7 and 8 were able to give and did give to the advertising permitted by the qualified stay, an approximation of the full force and effect of a picket line with all of the significance attached thereto as set forth in finding 18.

XXI.

That all of the activities set forth in these findings have been done knowingly, deliberately and intentionally (the elliptical picketing which occurred on January 13, 1941 excepted) with the knowledge, consent and approval, encouragement, cooperation and planned united action of the organizations named in paragraphs 2, 3, 4, 6, 7, and 8 of these findings and the attorneys and responsible officers and agents thereof.

XXII.

That all of the activities of the unions designated in paragraphs 2, 3, 4, 6, 7, and 8 of these findings and the responsible officers and agents thereof have caused the Plankinton House Company incalculable injury and damage.

XXIII.

None of the unions named in findings 2 to 6, inclusive, took any of the affirmative action required by subdivisions (a) and (b) of paragraph 2 of the order of the Board as sustained and enforced by the judgment of this court until July 28, 1941, namely, after the filing of this court's decision of July 8, 1941, in the instant contempt proceeding, that is to say, none of said unions prior to said July 28, 1941 posted notices to comply with the judgment of this

court dated May 14, 1940 or notified the Board in writing that any steps had been taken by any of said unions to comply with the order of the Board as enforced by the judgment of this court, as set forth in provision 2(a)(b) o. said order and judgment.

Shortly after the filing by this court of its memorandum decision of July 8, 1941 in the instant contempt proceeding, and on or about July 14, 1941 said unions, upon the advice of their attorneys discontinued all picketing and other activities in connection with the controversy at the Plankinton House. The affirmative action first mentioned was taken on July 28, 1941, two weeks later.

## XXIV.

A. That the unions named in findings 2 to 6, inclusive, went out on strike on November 2, 1939, to enforce their demand against the Plankinton House Company that said company sign a contract recognizing said unions as the "collective bargaining agencies" of all of the hotel employees of said company subject thereto, and that such contract, contrary to an arbitration award with respect thereto, contain an "all union agreement" clause without first submitting the latter demand to the vote of the employees of said company in the appropriate bargaining units by a secret referendum ballot to be conducted as required by law by the Wisconsin Employment Relations Board.

B. That at the time of said strike the Plankinton House Company was willing to recognize the demands of said unions with respect to recognition of same as the representatives of said employees for purposes of collective bargaining and signified its willingness to be bound by the arbitration award and to enter into an all-union agreement if the employees in the appropriate collective bargaining

units voted affirmatively for the all-union agreement, pursuant to the terms of the arbitration award by such secret ballot referendum to be conducted by the Wisconsin Employment Relations Board.

C. That the strike from its inception was directed against the Plankinton House Company to enforce the all-union agreement demand.

XXV.

That the strike resulted in the formation of the union known as the Independent Organization of the Plankinton House Company Employees, which union was on March 6, 1940 certified by the Wisconsin Employment Relations Board as the exclusive bargaining representative of all the employees of the Plankinton House Company for purposes of collective bargaining.

That this certification by the board and all of the proceedings had in connection therewith were reviewed by this court upon petition of the same petitioners that sought review of the order of the board dated February 15, 1940 in this case of unfair labor practices. Said review proceedings are the representation cases referred to in paragraph 10 of these findings. This court in its judgment sustained, approved and confirmed all proceedings of the board in connection with said representation cases including the final certification of the board dated March 6, 1940.

XXVI.

A. Ever since the certification by the board referred to in the preceding findings, the Plankinton House Company (and its employees) has recognized and dealt with the independent organization of the Plankinton House Company employees as entitled to recognition as the exclusive collective bargaining agency of all of the employees of said company for purposes of collective bargaining.

B. The above named independent union is the only union which the Plankinton House Company has been able to lawfully recognize as the representative of its employees for the purposes of collective bargaining since the judgment of this court rendered in May, 1940, sustaining, approving and confirming the Board's certification and proceedings in the representation review proceedings.

## XXVII.

A. All of the activities, set forth in these findings, of the unions named in findings 2, 3, 4, and 6 and of the responsible officers and agents thereof, when weighed in the light of all the circumstances and the real nature of the methods employed, have materially exceeded the bounds of peaceful picketing, persuasion or advertising, but rather have as their true object, intent and purpose the compelling and coercion of the employer Plankinton House Company to meet the demands made upon said company at the inception of the strike.

B. All of the activities set forth in these findings of said unions named in findings 2, 3, 4, and 6 and of the responsible officers and agents thereof, when weighed and considered in the light of the actual facts as above stated, are part of the same plan and campaign directed against the Plankinton House Company as an employer and not against the company's employees.

C. All of the activities set forth in these findings of the unions named in findings 2, 3, 4, and 6, and of the responsible officers and agents thereof are for an unlawful purpose in that they are directed at compelling the Plankinton House Company, as an employer, to meet demands which the said company may not lawfully accede to. The activities of the union organizations named in findings 7 and 8 and as hereinbefore stated were resorted to by them

for the purpose of supporting and aiding said other unions, namely, those named in findings 2, 3, 4, and 6, in the attainment of the purposes and objectives sought by the latter.

XXVIII

A. The campaign of said unions named in findings 2, 3, 4 and 6 was also characterized at the outset by violence, force and continuously threatening and other unlawful conduct which has since been continuously augmented and supplemented by intimidation and coercion in maintenance of an unlawful boycott.

B. The campaign from its inception has been one of a continuously coercive thrust calculated to engender fear.

C. In all probability violence, threats, force, coercion and intimidation will be engaged in at any time that conditions are favorable thereto.

XXIX.

The unions named in paragraphs 2, 3, 4, and 6 of these findings and the cited officers thereof, deliberately, intentionally and wilfully violated and disobeyed certain requirements of the judgment of this court, dated May 14, 1940, as affirmed by the supreme court of this state, by deliberately planning and intentionally committing the acts and conduct herein found to be a violation thereof as follows:

A. The activities and conduct set forth in and referable to findings 12 and 18 in violation of the cease and desist provisions of the judgment 1 (a), (b), and (c);

B. All activities and conduct from May 17, 1940 to January 13, 1941, referable to the situation set forth in finding 20 in violation of the cease and desist provisions of said judgment 1 (c);

and that in committing such violations of said judgment the said unions and the cited officers thereof did not act in good faith.

XXX.

That the unions named in findings 2, 3, 4, and 6 and the cited officers thereof, prior to July 28, 1941 (finding 23) deliberately and intentionally violated and disobeyed certain requirements of the judgment of this court dated May 14, 1940, as affirmed by the supreme court of this state, by failing to comply with the affirmative action requirements of said judgment, 2 (a) and (b), and that in so doing the said unions and the cited officers thereof (except International Union Operating Engineers Local No. 311 and its cited officers) did not act in good faith.

XXXI.

That the acts and conduct herein found to constitute a violation of said judgment were calculated to and actually did defeat, impede and prejudice the rights and remedies of the petitioner, the Wisconsin Employment Relations Board, having the right and duty to prosecute these enforcement proceedings and have caused and are causing incalculable loss and injury to the Plankinton House Company.

XXXII.

That of the unions named in findings 2, 3, 4, 5, and 6 of these findings, the union named in finding 2 (Hotel & Restaurant Employees' International Alliance Local No. 122, and its cited officers) were the ruling force.

XXXIII.

The Plankinton House Company has advised the court and counsel that said company will not press any claim for any indemnity award at this time against the unions

and their officers for any damages which it has suffered, although substantial, stating that it does so to avoid any possible imposition of such financial burden by means of assessments to be levied against the working members of the union and, therefore, reserves, without waiving, any such claim.

XXXIV.

International Union Operating Engineers, Local No. 311, has not been guilty of any wilful or contumacious conduct. Its failure to comply with the affirmative action requirements (subd. 2) of the Board's order and the court's judgment is of minor weight or consequence because full charge and control of the picket line and other activities in question rested with Employees' Local Union No. 122 and the unions mentioned in findings 3, 4, and 6, and their officers and agents in charge of the campaign and all methods used therein.

XXXV.

Wisconsin State Federation of Labor and Federated Trades Council of Milwaukee, and the officers thereof, have not been guilty of any wilful or contumacious conduct in respect of activities on their part as hereinbefore found. Their active connection with the controversy in question also ended when the unions named in findings 2, 3, 4, 5, and 6 complied with the Board's order of February 15, 1940 and the court's judgment with respect thereto, as stated in finding 23.

And as

CONCLUSIONS OF LAW

it is adjudged and determined:

1. That the order of the Wisconsin Employment Relations Board dated February 15, 1940 and enforced by the decree of this court did not expire one year after it was

made by reason of any provision in subsec. (4) of section 111.07, Wisconsin Stats. The one-year limitation stated therein is referable only to the suspension of "rights, immunities, privileges or remedies granted or afforded by this chapter", meaning Chapter 111, the Employment Peace Act of Wisconsin.

2. (a) That the conduct and activities set forth in, and referable to, findings 12, 18 and 20 constituted an unlawful boycott prohibited by said order of the Board as enforced by the order of this court and the Supreme Court of this state, and were for an unlawful purpose and violated the provisions of sec. 111.06 (2) (f) and (g) of the Employment Peace Act of Wisconsin.

(b) That the picketing set forth in finding 12 was used or employed as an instrument of boycott and for the perfecting and maintaining of same.

3. That the unions named in findings 2, 3, 4, and 6, and the cited officers thereof, must be and are adjudged guilty of contempt for their wilful and contumacious non-compliance with the "cease and desist" provisions of the said judgment 1 (a), (b) and (c).

4. That Hotel & Restaurant Employees' International Alliance Local No. 122, and its cited officers, Phil L. Valley, John Alexander and Jack Heisdorf, should be and are adjudged guilty of contempt by reason of their wilful and contumacious non-compliance with the affirmative action requirements (Subd. 2 of the board's order of February 15, 1940 and the court's judgment with respect of the same) at all times between the final decision of the Supreme Court of this state rendered January 7, 1941 and July 28, 1941 when said Local Union No. 122 and its officers complied with said requirements.

5. The unions named in findings 3, 4, and 6, namely, Laundry Workers Local No. 174, Bartenders Local No. 64

and Milwaukee Building & Construction Trades Council, and their officers, having joined with said Local Union No. 122 named in finding 2 in full and fair compliance on July 28, 1941 with said affirmative action requirements (Subd. 2 of said order of the Board and the court's judgment), said three unions first mentioned, namely, those named in findings 3, 4, and 6 and their officers, are not guilty of wilful and contumacious conduct in the matter and respect set forth in this conclusion No. 5.

6. Wisconsin State Federation of Labor and Federated Trades Council of Milwaukee, and their officers, were under no legal duty to comply with said affirmative action requirements, namely, Subd. 2 of the Board's order of February 15, 1940, and the court's judgment with respect of the same. They are guilty of no contempt in this respect.

7. Wisconsin State Federation of Labor and Federated Trades Council of Milwaukee, and their officers, are guilty of no contumacious conduct as stated in finding 35 in respect to activities on their part. They are guilty of no contempt in connection with said activities.

8. International Union Operating Engineers, Local No. 311, and its officers, are not guilty of any contempt in any of the respects mentioned in the findings herein.

9. Said International Union Operating Engineers, Local No. 311, Wisconsin State Federation of Labor and Federated Trades Council of Milwaukee, and each and all of the officers and agents of said organizations, are entitled to judgment dismissing the petition as to them without costs.

10. Under the circumstances stated in finding 33, no indemnity award will be made against the contemnors named in conclusions of law numbered 3 and 4 and no testimony taken with respect to the establishment of the amount thereof.

11. The instant proceeding is one for civil contempt, the primary objective of which is to compel obedience to the order of the Board and the decree of this court as affirmed without change or modification by the Supreme Court of this state.

12. For the reason stated in conclusion 11, and the contemnors named in conclusions of law numbered 3 and 4 having complied with said order and decree, all in accordance with paragraphs 1 and 2 of the memorandum decision of the court filed herein on July 8, 1941 (made part hereof), which compliance occurred at the times stated in finding 23, it is deemed just and equitable, and accordingly adjudged, that the imposing of sentence upon said contemnors should be and is suspended.

Let judgment be entered accordingly.

Dated August 2nd, 1941.

By the Court:

Gustave G. Gehrz,
Circuit Judge.

No. 153

January Term, 1941.

State of Wisconsin: In Supreme Court:

Wisconsin Employment Relations Board,
Respondent,
v.
Milk & Ice Cream Drivers & Dairy Employees Union, Local No. 225, etc.,
Appellant.

Appeals from a judgment and an order of the circuit court for Milwaukee county: Charles L. Aarons, Circuit Judge. **Affirmed.**

Petition by the Wisconsin Employment Relations Board against Milk & Ice Cream Drivers & Dairy Employees Union, Local No. 225, etc., under subsec. (7) of sec. 111.07 Stats. 1939, for enforcement of an order of the Board requiring the union to "cease and desist" from "unfair labor practices" found by the Board to have been committed by the union and its officers. From a judgment confirming the order and adjudging its enforcement, the union appeals. From an order punishing the officers of the union for contempt of court for disobedience of the judgment the officers appeal.

Some evidentiary facts about which there is no dispute and make more readily apparent the issues will be here stated. The Golden Guernsey Dairy Co-operative, referred to herein as "the company", is a corporation engaged at Milwaukee in the wholesale and retail dairy business, buying and selling milk, cream and other dairy products and producing and processing some of its products. It sells its merchandise by truck and its drivers are paid commissions on their sales. The Milk & Ice Cream Drivers & Dairy Employees Union, Local 225, referred to

herein as "the union," is a labor union affiliated with the American Federation of Labor. It has about two thousand members engaged as drivers, salesmen and other employees in the ice cream and dairy business at Milwaukee. The company had for several years had an all-union contract with the union which was about to expire upon notice, but to continue for another year unless notice of discontinuance was given. The union was the bargaining agent for the company employees. On giving notice of the termination of the existing contract the company informed the union that it would enter into a new contract with the union, but would not enter into a contract containing an all-union provision unless such provision were desired by three-fourths of its employees as required by sec. 111.06 (1) (c) Stats., and requested cooperation by the union in procuring a vote on that question. The company petitioned the plaintiff Board to hold such referendum, which was held, and of the 192 employees voting the vote was 118 against and 74 for the all-union provision. One hundred ninety-four of the company's employees were members of the union and comprised more than a majority of the company's employees. When the result of the referendum was certified by the Board to the company it again informed the union that it would negotiate a new contract with the union and that it would accept the contract existing between the union and other employees in the dairy business in Milwaukee with the all-union provision eliminated, which all other contracts contained. A bargaining meeting was arranged but prior thereto the union advertised in the city newspapers that it would not enter into a contract with the company unless the contract contained an all-union provision. Before the time of this meeting was fixed the employees of the company had formed an organization named "The Independent Association of Golden Guernsey Employees"

hereinafter referred to as "the independent union." This independent union notified the company that it desired to be the bargaining agent of the employees. At the meeting referred to the company informed the union of this demand and suggested that the matter of which union should represent the employees should be decided by a vote of the employees under the supervision of the Board but until such vote was taken it would recognize the union as the representative of its employees. The meeting between the company and the union for negotiations was held on April 3, 1940. The union there presented a contract for the company's acceptance which contained an all-union provision and price, hour, vacation and sick leave provisions far in excess of those in force in the contract with all the other employers in the dairy business in the city and so exorbitant as would make the aggregate cost to the company for the ensuing year, on the basis of the company's employment experience of the previous year, $134,500 and in excess of the company's entire profits of $92,265 for that year. The company offered some concessions but said that it would not accept an all union contract because of the vote of its employees and the prerequisite of the statutes for a vote of three-fourths of its employees to authorize such a provision. The night after this meeting a special meeting of the members of the union was held to take up the matters between the union and the company. At this meeting certain questions were submitted by secret ballot to the members present. Question 3 was: "Do you favor a strike at the Golden Guernsey Company if it does not sign the all-union agreement which the rest of the industry has agreed to?" The vote was 553 "Yes" and 2 "No." By like vote taken at the meeting the executive board of the union was professedly authorized to call a strike. After this meeting adjourned the executive board met the same night and decided to call a strike against the com-

pany. The committee included the president, vice president, secretary-treasurer and other members of the union. The president testified on the hearing before the Board that the committee decided to declare the company unfair; to notify its employees and ask them not to go to work; to give each employee a copy of the union by-laws, which by their terms obligate members on call of strike by the executive committee to cease work, and subjects a member who fails to do so to fine, suspension or expulsion at the discretion of the executive committee; to ask them to help advertise that the company and its employees "would be unfair." A copy of the by-laws was given next morning to each employee member. Of the company employees twenty signed a writing refusing to go to work. The union had signs prepared "Golden Guernsey Company unfair to organized labor. Local 225. Please do not patronize." "Golden Guernsey and its employees unfair to organized labor. Please do not patronize." Other signs were made up as follows: "2000 milkmen cannot be wrong; please do not patronize Golden Guernsey Dairy employees, Local 225." "Help 2000 milkmen." "2000 milkmen from Local 225 A. F. of L. beg your support. Please do not patronize Golden Guernsey employees." Signs were posted on a hack driven about the city: "We ask you, please do not patronize the Golden Guernsey Dairy employees." All these signs were "on the street" until the trial. Picketing of the plant as arranged by the executive committee of the union began early on April 5th.

Pursuant to the plans of the executive committee of the union extensive like advertising was carried on by the union throughout the city, through newspapers, by men carrying signs, by automobiles following delivery wagons of the company, by a man on a bicycle. The gist of the matter thus advertised was that the company and its employees were unfair to organized labor. Pickets

carried such signs at the company's plant and at some places where its products were delivered.

From the evidence before it the Board made findings as to the activities of the union which are more specifically referred to in the body of the opinion. Other facts relating to these activities will be there stated so far as deemed material to our rulings.

Fowler, J. The proceedings involved were duly instituted by the Wisconsin Employment Relations Board upon the petition of the Golden Guernsey Dairy Co-operative against the Milk & Ice Cream Drivers & Dairy Employees Union, Local 225, under Ch. 111 Wis. Stats, 1939, hereinafter referred to as "the act," enacted in furtherance of "the public policy of the state as to employment relations and collective bargaining." Secs. 111.06 (1) and (2) of the act declare "What are unfair labor practices." Sec. 111.07 by subsec. (1) provides that any controversy concerning such practices may be submitted to the Board; by subsec. (4) that after hearing the Board shall "make and file its findings of fact" and "its order," and that the order may dismiss the charge or require the person complained of to cease and desist from an unfair labor practice found to have been committed; and (7) provides that if a person against whom an order runs fails or neglects to obey it the Board may bring an action in the circuit court to enforce it. In the instant case the Board made an order against the union, the union did not comply with it, and the Board brought an action to enforce it. The union asked the court to set aside the order. The circuit court sustained the order and entered its judgment of enforcement, and from that judgment the union appeals.

After the judgment of the court was entered and notice of its entry given to the union, the Board by petition to the circuit court charged that the union, its officers and certain members wilfully and contumaciously committed acts in

violation of provisions of the court's judgment and asked that they be dealt with as in contempt of the court. The court by order required the defendant union to show cause why it should not be so dealt with. The union by answer denied in part committing the acts charged and admitted them in part and claimed justification of the admitted acts under the free speech clause of the United States Constitution and the XIVth Amendment. Upon hearing had before the judge who rendered the judgment, the president, vice-president and secretary of the union were adjudged guilty of contempt of court and punishment therefor was imposed. The defendant officers so adjudged appeal to this court. The two appeals were argued and submitted together and are treated in this opinion.

The findings of fact made by the Board on which the order involved is based are serially numbered from 1 to 19, inclusive. The union in its brief assigns as error that the court erred in sustaining these findings of fact because they are not supported by "credible and competent evidence." The credibility of the evidence was for the Board to determine. No incompetent evidence is pointed out, unless the claim of incompetency is that the evidence is not "substantial" or "more than a scintilla." It is conceded that to be of probative force to support findings evidence must be of this nature. The brief does not point out specifically any of the 19 findings as not supported by the evidence. The findings of the Board, if supported by credible and competent evidence are conclusive. Sec. 111.07 (7) Stats. The party on whom the burden of proof rests is required to sustain the burden by a clear and satisfactory preponderance of the evidence. Sec. 111.06.(3). We will first consider whether the evidence supports the facts found that fall under paragraphs (f) and (g) of sec. 111.06 (2) Stats.

Sec. 111.06 (2) (f) declares it an unfair labor practice for an employee to do any act "To hinder or delay by mass

picketing . . . the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with the free and uninterrupted use of public roads, streets'' etc.

Sec. 11.06 (2) (g) declares it an unfair labor practice for employees ''to combine or conspire to hinder or prevent by any means whatsoever the obtaining, use or disposition of materials, equipment or services.''

Sec. 111.06 (3) of the act provides that ''it shall be an unfair labor practice for any person to do or cause to be done . . . in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsecs. (1) and (2) of this section.'' (Sec. 111.06.)

Therefore if the Board found on sufficient evidence that the union ''caused to be done'' any acts in violation of pars. (f) (g) above stated it had power to issue an order requiring the union to cease and desist from the commissions of those acts, and its order so far as it required the union to cease and desist from such acts was valid and the judgment of the court was not in error in confirming such cease and desist order.

That the union ''caused to be done'' the picketing and all other acts recited in the statement of facts preceding the opinion is beyond dispute. Therefore such of those acts as constituted unfair labor practices the Board properly required the union to cease and desist from doing and the court properly adjudged to be enforced.

The Board by par. a of its finding of fact numbered 15 found that beginning early April 5th, while the company was loading its delivery trucks a picket line formed and passed to and fro in front of the company's plant. The number in line during the loading period frequently numbered from 40 to 95. The pickets marched slowly two by

two, back and forth, with short steps and close together. Policemen present were forced on an average of eight to ten times each morning to break or open this line to permit entrance and emergence of the trucks. The interference and delay thus caused made it necessary for the company to employ additional help to approximate its usual loading time. After the delivery trucks left the plant, the number of pickets decreased, but picketing continued throughout the day and into the night. It decreased somewhat after commencement of the proceeding before the Board, but with such decrease all these acts continued down to the time of trial. By this finding the Board in effect found that by mass picketing the union hindered the pursuit of lawful work of the company and that it obstructed and interfered with entrance and egress to and from the company's plant.

By par. b of finding 15 the Board found that the authorities sent by the union to follow the company's delivery trucks to their places of delivery on many occasions cut in ahead of the trucks, impeded their progress and prevented their proper parking in making deliveries and generally interfered with the free and unobstructed use of the streets by the trucks and endangered the safety of the drivers and the property of the company. It also found that at places of delivery there was frequent interference by the picketing carried on by the occupants of the automobiles with the free and unobstructed use of the sidewalks by the company drivers. These findings of the Board are clearly supported by the evidence and constituted such hindrance of the pursuit of lawful work and such obstruction of ingress and egress to and from the plant and of the use of the public streets and sidewalks as to constitute violations of both pars. (f) and (g) of sec. 111.06 (2) Stats. as to warrant the cease and desist order of the Board and of the judgment of the court so far as they pertain to such practices. This is sufficient to warrant affirmance of the cease and

desist orders of the court, as everything else in the general terms of the judgment, all being as to things which the union had no right to do, did not harm or prejudice the union. The only paragraph of the judgment that requires the union to cease and desist from doing any specific acts is par. a of division 1. That paragraph requires the union, its officers and members to "cease and desist from coercing or attempting to compel . . . (the company) by picketing its plant, obstructing the ingress to or egress from its plant, interfering with its delivery trucks or the drivers of the same, picketing the residences or places of business of any of the complainant's customers, exercising any form of coercion toward or intimidation of any such customers, or in any other way to make or enter into a labor contract with the respondent (union) containing an all-union or closed shop provision." The Board and the court specifically found that the things mentioned were done for the ultimate purpose of compelling the company to enter into an all-union contract. The union contends that there is no evidence to support this inference of fact but we consider that the inference is warranted. It is to be noted, as held in **Century Building Co. v. Wisconsin Employment Relations Board**, 235 Wis. 376, 382, 383, 291 N. W. 305, that, although the Board's findings must be supported by a clear and satisfactory preponderance of the evidence, when a case gets before the circuit court for review the Board's findings must be sustained if there is any credible evidence to support them. Par. 1 a of the judgment plainly implies that the union must cease and desist from doing the specific things mentioned therein, and being in contravention of pars. (f) and (g) of sec. 111.06 (2) Stats. the union could be and was properly required to cease and desist from doing them.

The union contends that the picketing done at the places of business of the company's customers was not aimed at the owners of these places and that these places therefore

were not picketed, but that the picketing involved was only of the trucks and their drivers. We regard this contention as sophistry. In our opinion it constituted a picketing of the places of business before which it occurred. Counsel also claim that the acts done did not constitute coercion or intimidation of the customers. That it did not constitute putting in fear of physical harm is true, but it is plain that it did constitute coercion.

We do not find it necessary to consider any other provisions of the cease and desist provisions of the judgment except pars. c, e and h. All of the cease and desist provisions are set out in the margin.

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It Is Therefore Ordered and Adjudged that the respondent . . . its officers, agents, members and successors, do and shall—

1. Cease and desist from—

a. Coercing or attempting to compel the complainant, Golden Guernsey Co., a corporation (hereinafter referred to as the complainant) by picketing its plant, obstructing the ingress to or the egress from its plant, interfering with its delivery trucks or the drivers of the same, picketing the residences or places of business of any of the complainant's customers, exercising any form of coercion toward or intimidation of any such customers, or in any other way, to make or enter into a labor contract with the respondent containing an all union or closed shop provision.

b. Coercing in any way or attempting to compel the complainant to interfere with its employees in the exercise of their legal right to refrain from being subject to a labor contract containing an all union or closed shop provision.

c. Publicly asserting in any way that the complainant is unfair to organized labor or to the respondent union, unless such charge is based upon some reason other than that the complainant has declined to enter into a labor contract with the respondent containing an all union or closed shop provision.

d. Intimidating in any way the employees of the complainant in the exercise of their legal right to work for the complainant without molestation.

e. Hindering by threats or intimidation of any sort the disposition by the complainant of its merchandise or services to its customers, and the obtaining, use or disposition by the customers of its merchandise or services.

f. Engaging in or conducting any secondary boycott of any customer of the complainant.

g. Exercising any form of coercion toward or intimidation of any of the complainant's customers.

h. Asserting to any of the complainant's customers that the complainant is unfair to organized labor or to the respondent union because the complainant has declined to enter into an all union or closed shop labor contract with the respondent.

It will be observed on inspection that all but c, e and h are general in their terms. None other mentions any specific act. It is contended that the acts done by the union respecting the matters covered by the other provisions did not constitute "coercion," or "intimidation." If not, then these acts are not under the ban of the judgment. As to c and h they ban asserting that the company is "unfair to organized labor or to the respondent union." Some of the placards proclaim the company as "unfair to organized labor, Local 225." Because of this we consider e and h proper. There may be some question, at least there is some contradiction in the authorities, as to whether doing or refusing to do certain acts render an employer "unfair" but there certainly can be no controversy over the proposition that an employer is not "unfair" when his only act is refusing to do and refraining from doing what the law forbids him from doing. All the company has done in this case, if the evidence produced by the company is believed, and the Board and the trial court properly believed it, is to refuse to sign an all-union contract and to refrain from trying to influence its employees in respect to joining or not joining the independent union or the defendant union, and to refrain from interfering with its employees in respect to their choice of a bargaining representative or their attitude as to an all-union contract. It has done nothing proscribed by sec. 111.06 (1) Stats. which declares what shall constitute unfair labor practices by an employer. Par. (c) of subsec. (1) of said section by necessary implication proscribes an employer's entering into an all-union labor contract unless three-fourths of his employees constituting a collective bargaining unit have voted therefor. The Board found and the court confirmed that the company "has not dominated or interfered in any way with any of its employees in the exercise of their legal rights respecting organization or collective bargaining or any rights re-

ferred to" in Ch. 111 relating to "Employment Relations." This finding is supported by the evidence.

Counsel cite recent decisions of the United States Supreme Court to the proposition that it is proper in labor controversies to placard that an employer is unfair: **Lauf v. E. G. Shinner & Co.**, 303 U. S. 323, 82 L. Ed. 72; **Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.**, ... U. S., ..., 85 L. Ed. (Adv. Op. #2) 91; **Fur Workers' Union, Local 72, v. Fur Workers' Union**, ... U. S. ..., 85 L. Ed. 47. We find nothing in these cases bearing on the proposition here involved. It merely appears from them that signs of the nature stated were involved therein, but whether they were truthful or untruthful is not discussed or mentioned. It may be conceded that if an advertisement charging unfairness gives the facts on which it is based in connection with the statement of unfairness this would not of itself be an improper labor practice. But under the facts of this case including the ban against publishing the bald statement of unfairness in the cease and desist order of the Board and in the judgment of the court was proper.

Par. e of the judgment bans "hindering . . . by threats the obtaining (or) . . . use by the company's customers of its merchandise or services." So doing is in contravention of par. (g) of sec. 111.06 (2), "combining to hinder or prevent by threats . . ." or "to combine to hinder or prevent by any means whatsoever the obtaining, use or disposition of materials, equipment or services." As to threats, one of the wholesale customers who protested against picketing in front of his store was told by a picketer that the union would so picket as long as he took milk from the company drivers, and the picketing itself was plainly a threat to that effect. We consider that there was enough in the case to warrant inclusion in the cease and desist portion of the judgment the use of threats against

customers by the picketers. Besides, if there were only isolated instances of such threats, no harm results to the union from including the ban in the judgment, as confessedly the union has no right so to threaten.

We consider that we have covered sufficiently the contents of the cease and desist order of the court. If those provisions are in point of law such as the court might properly enter, those provisions of the judgment of the court must be sustained. The only contention of the appellant that those provisions are erroneous is that they violate the free speech and free press provisions of the United States Constitution and are therefore prohibited by the XIVth Amendment. This contention is based upon three recent decisions of the United States Supreme Court, **American Federation of Labor v. Swing**, ... U. S. ..., 85 L. Ed. 513, **Thornhill v. Alabama**, 310 U. S. 88, ... L. Ed. ... and **Carlson v. State of California**, 310 U. S. 106, 84 L. Ed. 668. It is true that cases of state courts are cited pro and con upon this proposition, also cases of inferior federal courts. But it is in our opinion entirely useless to cite or to consider any of these cases or any cases of the United States Supreme Court except such as have been rendered by the court as now constituted. The only cases decided by that court as now constituted that appear to us to afford any light upon the three next above mentioned are the flag case, **Minersville District v. Gobitis**, 310 U. S. 589, ... L. Ed. ..., and the recent case of **Milk Wagon Drivers' Ass'n. v. Meadowmoor Dairies**, ... U. S. ..., 85 L. Ed. 497. These cases indicate that there are limits beyond which the present court will not go to invalidate police regulations of the state because violative of the rights of religious freedom and freedom of speech and to reverse factual findings of state courts under the common law. The **Meadowmoor Dairies Case**, supra, it is true goes upon the proposition that the act involved had a "background" of

extreme violence. The picketing involved was claimed to be lawful under the rule of the **Carlson** and **Thornhill Cases.** Par. 4 of the syllabus to the opinion in the **Meadowmoor Case** sufficiently indicates the holding and such applicability as it has to the instant case:

> "Picketing which in itself is peaceful may be coercive when set in a background of violence."

With like reason may it be said that picketing which is unlawful is not justified on the ground that it is a proper exercise of the right of free speech. Par. 5 of the syllabus reads:

> "The Supreme Court of the United States cannot say that a finding of a state court that a momentum of fear generated by past violence may survive even though future picketing may be wholly peaceful so contradicts experience as to warrant rejection."

With like or greater reason, the Supreme Court of the United States may not say that the statutory provisions above referred to contained in pars. (f) and (g) of sec. 111.06 (2) Stats. so contradict experience and reason as to warrant rejection.

It is said in **American Furniture Co. v. I. B. of T. C. & H. of A.**, 222 Wis. 367, 268 N. W. 250, that the terms of a statute "cannot be stretched to permit a union to enforce by picketing demands which the employer may not lawfully accede to." No more may this be done by court decisions. Picketing that so aims is unlawful although it is free from violence. That is just what the picketing here involved is carried on to enforce. It is carried on to enforce the union's demand that the company enter into an all-union contract, and that as heretofore pointed out the company cannot do because such contract cannot under sec. 111.06 (1) (c) be entered into unless voted by three-quarters of its employees. The case of **Senn v. Tile Layers'**

**Union**, 301 U. S. 468, 81 L. Ed. 1229, is particularly relied on by appellant to support the instant picketing, because of its upholding of the picketing there involved because it was peaceful. But the picketing there involved was held to be lawful. The opinion plainly implies that had it been unlawful, it would not have been justified though free from violence, and the minority of the court was of opinion that the picketing was unlawful and therefore not justified notwithstanding its freedom from violence. As to this see further infra.

We find nothing inconsistent between the provisions of the cease and desist order covered by Pars. (f) and (g) of sec. 111.06 (2) and the **Thornhill, Carlson** and **Swing Cases**, on which the union so confidently relies. In none of these cases was the picketing involved carried on for unlawful purpose. No statutory violations were involved in the **Swing Case**. The opinion of the court, p. 514, L. Ed. (Adv. Op.) states the issue to be merely, "is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?" It is also stated in the opinion, p. 515, L. Ed. Adv. Op. No. 8:

> "All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted so as to occasion 'imminent and aggravated danger.'"

We should not extend the rule of that case beyond the point at which the court itself stopped. Here we have violations of the statutes above mentioned as to which no question of constitutionality is raised.

All that was decided in the **Thornhill Case**, reducing it to its lowest terms, is, that the statute there involved was void because it forbade picketing that was free from vio-

lence and in which the pickets only said that "they were on strike and did not want anyone to go up there to work." The picketing involved in the **Thornhill Case** was free from violence but picketing is not lawful merely because it is free from violence. It is said by the United States Supreme Court in the **Senn Case**, supra, that picketing to be peaceful must not only be free from violence, but there must be "absence of any unlawful act. . . . It (peaceful picketing) precludes any form of physical obstruction or interference with the plaintiff's business." As above pointed out, there was here physical obstruction and physical interference with the company's business, both by mass picketing which is expressly excluded from consideration in the **Thornhill Case** and which is there conceded to be subject to inhibition when properly particularized, and by obstruction to and interference with ingress and egress and use of streets, the latter to such an extent as to endanger safety of persons and property.

The **Carlson Case** involved violation during a strike of an ordinance by picketing, but it seems to be sufficiently distinguished from the instant situation by the statement in the opinion, p. 110, that—

> . . . "During this period (of picketing, 7:30 to 9 A. M.) vehicles and persons passed freely without any molestations or interference through the picket line from the highway to the project and from the project to the highway, and the traffic of persons and vehicles along the highway was not obstructed."

As to violations of pars. (f) and (g) of sec. 111.06 (2) Stats. the instant case is clearly distinguished. As to the sign displayed, "This job is unfair to C. I. O." it is comparable to the sign "The Golden Guernsey Company is unfair to organized labor and Local 225," but the case is without evidence, as here, establishing that the employer was in fact not "unfair." The opinion does not mention the mat-

ter of unfairness, or whether the signs conveyed true
false statements.

The court in the **Senn Case**, supra, in saying p. 47
"Senn did not contend that it was untruthful to chara
terize him as 'unfair' if the requirement that he refra
from working with his own hands was a lawful one,
plainly implies that one charged with being "unfair" ma
prove the fact to establish that he is not unfair, and th
if he so establish to placard him as unfair is unlawful. T
assert that one is unfair to organized labor may proper
be adjudged to be an unfair labor practice where as he
the evidence shows that the assertion is false.

Since submission of the case appellant's counsel hav
by letter called attention to a per curiam decision of th
Supreme Court of the United States announced June 2
**Wohl and Platzman v. Bakery & Pastry Drivers & Helper
Union Local 802, et al.** The only pertinent part of th
decision reads: "Judgment Reversed, American Fed.
Labor v. Swing, decided February 10, 1941." As the ru
ing was based on the **Swing Case** entirely, it affords
additional support to the appellant's contention. As in th
**Swing Case**, no statutory provisions were involved an
the ruling rested upon common law. Reference to the ni
opinion of the New York Supreme Court, 14 N. Y. S. (2d
198, shows that the case was brought in equity to enjoi
the union from picketing in furtherance of a secondar
boycott. An injunction issued. Both the New York Appe
late Division and the Court of Appeals affirmed the ni
ruling. Neither wrote an opinion. Par. (g) of sec. 111.0
(2) Stats. declares a secondary boycott "an unfair labo
practice."

We believe the above sufficiently covers the claims o
appellant respecting errors affecting the judgment of th
court sustaining the Board's order, except the claim tha

the Board improperly rejected evidence offered by the union.

The rejected evidence was offered as of probative force in support of the union's contention that the company was "unfair" to organized labor. The items of rejected evidence will be briefly stated and our ruling given. (1) The president of the company was active in promoting the enactment by the Legislature of Ch. 111, Laws of 1939, and repealing the then existing Ch. 111 Stats., which resulted in the creation of the present and abolished the then existing Labor Board. We fail to perceive that this has probative force upon the question of the company's fairness or unfairness towards the union. (2) The secretary of the union was asked what arguments were presented at the meeting of the union on April 4th relating to the questions submitted to vote at that meeting. Objection to the question was properly sustained. (3) The president of the company was asked whether any complaints were made to him as to unlawful acts by any of the strikers and offered to show that none was made. The objection was properly sustained, and testimony properly rejected. (4) A question was asked whether a route foreman of the company had engaged in anti-union activities. Objection to it was properly sustained. (5) A question was asked whether employees quit their employment with the company because of domination by the company over the independent union. The objection was properly sustained.

As to the contempt matter, it seems not open to question that the appellants charged with contempt were properly adjudged guilty if they intentionally and knowingly violated any of the provisions of the judgment. It is said in **State ex rel. Attorney General v. Farekas**, 223 Wis. 356, p. 358, 269 N. W. 700:

"The order and judgment of the court finding the

defendant Farekas guilty of contempt must be sustained under the authority of State ex rel. v. Circuit Court, 98 Wis. 143, and John J. Jelke Co. v. Beck, 208 Wis. 650. The defendant acted in entire disregard of the court's order claiming that the code, under and pursuant to which the order was made was invalid and unconstitutional. The defendant flouted the court and contumaciously refused to abide by an order made by a competent court having jurisdiction over his person and the subject matter of the controversy. Whether the order was right or wrong, it was the duty of the defendant to obey it until relieved therefrom in some one of the ways prescribed by law."

Under the rule above stated it was the duty of the union and its officers and members to obey the provisions of the judgment of the court until they were reversed on appeal or by the trial court set aside, modified or declared to be no longer in force in some proper proceeding. Whether the provisions of the judgment were right or wrong in point of law is immaterial upon the proposition of obedience to them under the rule stated. We have first to determine whether the trial court in adjudging that the defendants charged with contempt intentionally committed acts in violation of those provisions.

The court found and it is not disputed that the union continued to picket the company's main plant after the rendition of the judgment and the service of notice of its entry and of its terms upon the defendant union each day from early in the morning to six o'clock at night by pickets working in regular shifts; that said picketing consisted of from two to five pickets walking the sidewalks in front of the Golden Guernsey plant, one of whom wears an apron bearing the legend front and back: "2000 milkmen from Local 225 beg your support. Do not patronize Golden Guernsey Dairy Employees." The same type of picketing was carried on during the same hours daily at the Golden

Guernsey ice cream plant and store located across the street from the main plant. The court also found that the union for the purpose of injuring the Golden Guernsey Company caused to be parked daily at or near an advertising sign of the Golden Guernsey Company in the form of an immense milk jug located on one of the main approaches to the city one or more automobiles from five to seven o'clock p. m. and having a sign thereon bearing the legend above stated. This practice was not begun until after the judgment of the court affirming the order of the Board was rendered.

The court further found that the union has continued to have the delivery trucks followed by automobiles, substantially as before entry of judgment, except on Sundays and with signs as next above stated. Picketing at the places of the wholesale customers at times of delivery also continued as before the judgment. One or two occupants of the cars walk before the customer's place of business carrying a sign as next above stated. The extent to which the union has continued its violation of the provisions of the court's judgment, and the results of such continued violations, is stated in two of its findings that are sustained by the evidence, as follows:

> "The union employed pickets to follow the wholesale route drivers of the Golden Guernsey while engaged in the delivery of milk to customers. Such practice has been persistent and continuous, except on Sundays; but it is not usually continuous throughout the entire route. Such following is usually a few car lengths behind the Golden Guernsey trucks, whose drivers in a number of instances have attempted to operate their trucks in such a manner as to cause their pursuers to lose sight of them. On one occasion a Golden Guernsey truck driver was pursued in Racine County at a speed of forty to fifty miles per hour by pickets, who, after overtaking the Golden Guernsey

truck, drive ahead of it in such a manner as to cause the driver of the latter to fear that his truck would be ditched. When the route driver of the Golden Guernsey reaches the customer's place of business one or two pickets engage in picketing the place of business of the customer, regardless of the position of the route driver's truck. The pickets who follow the route driver usually park their automobiles very close to the rear of the route driver's truck while the latter is delivering milk. This surveillance and following of the company's truck drivers on wholesale routes has continued and, in recent days, has been conducted with increased vigor and persistency." . . .

"The methods employed by the union in following the Golde Guernsey trucks tend to endanger public traffic and to impair the driving control of the Golden Guernsey drivers."

Other specific findings of fact were made by the circuit judge, none of which we deem it necessary to set out, because the facts above stated sufficiently show that the cease and desist order of the court was disobeyed by picketing at the plant, by following the company trucks and by picketing the stores of the wholesalers. The union contends that the facts stated did not constitute a violation of the order because the acts found were not aimed at the company or its customers but only at the drivers. The judgment banned the picketing, regardless of at whom it was aimed. The picketing at the plant was obviously a picketing of the company notwithstanding that the placards used subsequent to the entry of the judgment read "Golden Guernsey employees" instead of "Golden Guernsey Company." The mere device of pasting the word "employees" over the word "company" on these placards as was done, did not change the effect of the picketing of the plant of the company, or the picketing of the wholesale customers during the times of delivery. As stated in discussion of the main case, par. a of the cease and desist

portion of the judgment plainly required the union to cease and desist from picketing the company plant and the stores of its wholesale customers and so following the company trucks with automobiles as to endanger traffic or interfere with or obstruct the free use of the streets by the company trucks and drivers. Whatever else was involved in their acts did not obviate or evade the violations thus found.

The court further found that the president, vice-president and secretary-treasurer of the union, the persons charged with contempt of court, intentionally and deliberately planned and instigated the acts found to have been committed:

> "(a) in an attempt to exert compulsion upon the Golden Guernsey Company to enter into an all-union agreement with said Union; (b) in an attempt to exert compulsion upon the Golden Guernsey to interfere with its employes in the exercise of their right to freely select their own bargaining agency without interference in their right to refrain from being subject to an all-union agreement; (c) in an attempt to intimidate the employes of the Golden Guernsey in the exercise of their right to work for that company without molestation; (d) in an attempt to hinder by intimidation the disposition by the Golden Guernsey of its merchandise and services to its customers and the obtaining, use and disposition by its customers of its products and services; and for the purpose of causing such customers to cease buying and receiving the products and services of said company until such all-union agreement shall have been entered into between the company and its employees."

The court further found as bringing the proceeding within sec. 295.01 Stats. prescribing the procedure in contempt of court cases, that these acts "were calculated to and did defeat, impede and prejudice" the rights and remedies of the Board, who were the petitioners in the con-

tempt proceedings, who have the right and are charged with the duty to prosecute the instant enforcement procedure under Ch. 111 Stats. 1939, and that these acts have caused and are causing injury to the Golden Guernsey Company and to its employees.

Under these findings the conviction and sentence by the court was correct and must be affirmed unless the court erred in not granting a jury trial on the appellants' motion therefor or in denying their motion to have another judge called in on the filing of an affidavit of prejudice against the trial judge.

Like motions, based on the same statute (sec. 268.27 (3) and (4) Stats. 1931; sec. 103.60 (3) and (4) Stats. 1939) were made in **John F. Jelke Co. v. Beck**, 208 Wis. 650, 242 N. W. 576. It was there held, p. 660, that both motions were properly denied because the provision relied on only applied to proceedings involving "a labor dispute as that term is defined in the act." The "act involved was Ch. 376 Laws of 1931, which created secs. 268.18 to sec. 268.30 Stats. 1931, now secs. 103.51 to 103.63 Stats. 1939. Sec. 268.27 then provided as sec. 103.60 now provides that:

> "In all cases where a person shall be charged with civil or criminal contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy: (1) . . . (2) . . . (3) . . . Right of jury trial (4) The right to file with the court a demand for the retirement of the judge sitting in the proceedings, upon an affidavit of prejudice being filed as is now provided by law in other cases."

We consider that neither pars. (3) nor (4) of sec. 103.60 Stats. is applicable to the instant proceeding. While by their terms these paragraphs cover cases of contempt arising out of a labor dispute and provide for change of venue and a jury trial therein it was held in the **Jelke Case**, supra,

that the section containing these paragraphs was not intended to have and does not have any application to the exercise by a court of equity in cases other than those growing out of a labor dispute as that term is defined in the act. This implies that the provision was intended to apply only to cases in equity brought to enjoin unlawful acts enjoinable under the rules of equity jurisprudence which make unlawful acts and irreparable injury essential to confer equity jurisdiction. Thus if in such an action, assuming, but not deciding, the constitutionality of par. (3) under the grant of equity powers of courts of equity by our state constitution, a court should issue an injunction or restraining order and a person should be charged with its violation the provision for a jury trial would apply. In the **Jeike Case**, supra, although the action was one in equity for an injunction, the right to a jury trial was held not to exist because the action had no relation to a labor dispute. Here, by parity of reasoning, par. (3) does not apply to the instant proceeding because the proceeding is not an action in equity for an injunction. It is not a proceeding cognizable by a court of equity to enjoin an unlawful act causing irreparable injury, but a statutory proceeding to review and enforce an order of an administrative Board. That right to a jury trial under sec. 103.60 (3) and (4) refers only to injunctions issued in equity cases, appears clearly from the previous sections relating to injunctions immediately previous to sec. 103.60, secs. 103.56 and 103.57, wherein the nature of the action contemplated is particularly shown. By par. (b) substantial and irreparable injury to property must exist; by (c) greater injury will result to plaintiff by denying relief than to defendant by granting it; and (e) plaintiff has no adequate remedy at law. None of these things need exist to authorize a cease and desist order in actions for enforcement of the Board's orders. We therefore hold that the

provision for a jury trial does not apply to the instant case, and that the right to trial before another judge does not exist because that provision, like that for a jury trial, exists only in a case invoking the equity jurisdiction of the court.

It is true that a trial court in New York has ruled (Boland v. Parisi, 18 N. Y. S. (2d) 698) that a provision of the New York Code of Civil procedure, similar to sec. 103.60, prescribing a jury trial in contempt proceedings for violation of an injunction issued in an equity case involving a labor dispute applies to violation of a cease and desist order issued in a proceeding before the New York Labor Board. Being a decision of a trial court it is at best of no higher status than the court whose decision we are reviewing. We do not accept it as governing our instant ruling.

It follows that the order of the circuit court must be affirmed.

**By the Court.**—The judgment and order of the circuit court are affirmed.

State of Wisconsin

In Supreme Court

January Term, 1941 No. 151

Carpenter Baking Co., a corporation,
Respondent,
v.
Bakery Sales Drivers Local Union No. 344 (A. F. of L.) et al.,
Appellants.

Appeal from a judgment of the circuit court for Milwaukee county, Wm. F. Shaughnessy, Circuit Court.

**Affirmed.**

Action by Carpenter Baking Company, a corporation, plaintiff, against Bakery Sales Drivers Local Union No. 344, Auto Truck Drivers Joint Council No. 50, Elmer Johnson, Joseph Reichartz, Gilbert Schlechta, and G. McMicken, defendants, commenced on August 15, 1940, to restrain defendants from conduct calculated to coerce and intimidate plaintiff's employees; from following plaintiff's employees and delivery trucks while the trucks were being used to deliver bakery products to customers; and from inciting and attempting to persuade persons not to deal with plaintiff or plaintiff's employees. The complaint alleged that plaintiff's employees are engaged in the sale and delivery of its products; have refused to designate defendant Bakery Sales Drivers Local Union No. 344 as bargaining representative; that no labor dispute exists between plaintiff and its employees; that defendants entered a conspiracy contrary to the provisions of sec. 343.681, Stats., to injure plaintiff's trade and business for the purpose of compelling plaintiff to coerce its employees to become members of defendant unions. The

complaint alleges that in furtherance of the conspiracy defendants in cars followed the delivery trucks of plaintiff and sought to dissuade plaintiff's customers from purchasing bakery products sold by plaintiff's employees on the ground that the employee was not a member of defendant unions. The answer alleged that plaintiff had engaged in conduct which was in violation of the National Labor Relations Act and had been found guilty of such conduct by an intermediate report of an examiner of the National Labor Relations Board after public hearing. The answer further set forth that the conduct of defendants was merely a peaceful and truthful advertisement of the fact that plaintiff's employees were not members of the defendant Bakery Sales Drivers Union. Defendants further set up that insofar as any of defendants' actions are violations of chapter 111 and sections 103.53 and 103.62 (3), Stats., these statutes are unconstitutional and void; that assuming that they are not, chapters 111 and 103, Stats., are inapplicable because plaintiff is engaged in interstate commerce and plaintiff does not come into court with clean hands and is entitled to no relief.

The case was tried to the court largely upon a stipulation of facts, and the court duly made and entered findings of fact and conclusions of law in which it held that conduct of defendants constituting a violation of sec. 111.06 (a) (b) (c) and (f). Judgment was entered on December 16, 1940, in accordance with the findings and conclusions, and defendants were restrained from adopting means and engaging in conduct intended and reasonably claimed to coerce and intimidate plaintiff's employees from following plaintiff's employees' delivery trucks while the trucks were being used to deliver products to plaintiff's customers; from inciting or attempting to persuade persons not to deal with plaintiff or plaintiff's employees, or with retail dealers offering plaintiff's products for sale; from

otherwise intentionally molesting, plaintiff or interfering with its business. Defendants appeal.

Per Curiam. Upon this appeal Mr. Justice Fowler, Mr. Justice Fairchild and Mr. Justice Martin are of the opinion that the judgment should be affirmed. Mr. Chief Justice Rosenberry, Mr. Justice Fritz, and Mr. Justice Wickhem are of the view that the judgment should be reversed. This situation necessarily results in affirmance of the judgment appealed from. Zohrlaut v. Mengelberg, 148 Wis. 592, 134 N. W. 1135.

Judgment affirmed.